



Limiting Snow Plowing Liability

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Your Future Competition?

“Of course I’m insured...”



After this presentation, you will better understand...

- How and why the Client and you might get sued and pay for a third party slip, trip, fall
- How to defend the Client and you against third party slip, trip, fall lawsuits
- The law may limit liability, but insurance may still pay

Calamity Strikes!!



Are the Client and hired Contractor liable?
Will the Client's or hired Contractor's
insurance pay?



Are the Client and hired Contractor liable?

Plaintiff's Burden under Premises Liability Theory

- Plaintiff must prove “negligence”
 - Duty owed,
 - Duty breached,
 - Proximate cause,
 - Damages

- Duty breached, if:
 - Actual or constructive notice of hazard, AND
 - Failed to inspect, warn and take reasonable precautions

- Defendant's burden is reduced by plaintiff's comparative fault
 - i.e. contribution to their own damages (improper footwear, rushing, distraction, disregard of open and obvious hazard, etc.

Are the Client and hired Contractor liable?

NH Law Changes the Game...

508:22 Liability Limited for Winter Maintenance.

- Protects all likely defendants (Owner, PM, Contractor)
- If “Certified Applicator” oversight
- Even given “notice” of a hazard
- Limited to third party suits arising solely from snow and ice accumulation
- Absent gross negligence or reckless disregard of the hazard
- Assumed to be adhering “best practices”... “In the absence of proof to the contrary”
- Must maintain written record of winter maintenance practices

“In the absence of proof to the contrary”?

- Third party slips/falls and is injured.
- File lawsuit alleging negligence.
- Your insurance carrier files “[motion for summary judgment](#)” to have the case dismissed citing NH 508:22
- Plaintiff produces this picture for the court of conditions at the time of the incident
- How likely is the court to find a “question of fact” remains as to whether “published” best practices” were adhered?



Critical to Prevailing with Motion for Summary Judgment (MSJ)

508:22 Recordkeeping Requirements:

- Description of winter maintenance practices
- Type and rate of application for de-icing materials
- Date of treatment
- Weather conditions for each event requiring de-icing

Critical to Prevailing with **Motion for Summary Judgment (MSJ)**

Additional best practices:

- Document “Inspections”
- Document Date **and Time** of treatment
- Clarity in contracts with owners/property managers:
 - Exactly who is responsible to do what, where, when and how.
 - Who/What “triggers” winter maintenance activities, including inspection
- A photo is worth a thousand words – document performance.
- Retain records of performance for at least 4 years (SOL+1)

It's not whether Insurance will pay, but who's insurance and how much...

- Owner/Contractor typically liable for damages “caused in whole or part”
- Commercial General Liability (CGL) Policy normally responds:
 - **Three coverage parts**
 - Cov A – Bodily injury and property damage
 - Cov B – Personal and advertising injury
 - Cov C – Medical payments
 - **Cov A:**
 - Obligation to “defend” allegations of liability
 - Sub-limit typically \$1MM/occurrence
 - **Cov C:**
 - Optional, “good faith”, no-fault coverage for medical expenses ONLY
 - Sub-limits vary, typically \$5-10k/occurrence

Do we fight or seek settlement? A cost/benefit decision...

We give this in good faith to avoid costly lawsuits...

Next Steps

- Review learnings with your Legal Counsel and Insurance Agent
- Consider these learnings relative to contract specifications; regardless of your position in the relationship
- Assess effectiveness of your recordkeeping practices for winter maintenance activities
- Pull your weight in helping business partners prevent and defend third party premises liability incidents
 - Once notified of an incident, collect and preserve evidence that'll support a Motion for Summary Judgment for dismissal based on 508:22
 - We're all on the same team!

Questions/Comments???

- Thank you!!!

